**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAY 04 2009

SRC 08 074 50147

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

MDadrick
for John F. Grissom
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. The petitioner seeks employment as an ethnoeconomist and journalist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel argues that the director failed to consider relevant evidence, and incorrectly focused on the national interest waiver issue rather than on the petitioner's claim of exceptional ability.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(4)(ii) requires that a petitioner seeking to apply for the exemption must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate. Counsel, in an introductory letter, claimed that the petitioner had submitted Form ETA-750B, but the record does not contain this required document. The petitioner did submit, in duplicate, Form ETA-750A, Application for Alien Employment Certification, signed by counsel. It appears that counsel inadvertently prepared the wrong form. Nevertheless, because the record does not contain Form ETA-750B the petitioner has not properly applied for the national interest waiver. The director did not note this omission in the denial notice. We will, therefore, review the matter on the merits.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

On her Form I-140 petition, the petitioner stated that she "Conducts extensive research into potential financial opportunities in the United States for German investors. She then authors articles in German

periodicals that are distributed to Germans in their home country. She uses both economics and journalism to achieve exceptional results."

Counsel asserted that the petitioner's "duel expertise" (*sic*) in "ethnoeconomics" and journalism "is not amenable to labor certification." Noting that the petitioner has already accumulated experience as a journalist in the United States under an I nonimmigrant visa, counsel stated:

> How does the labor certification process fit into hiring an individual with this background and prospective value in the future? It doesn't!
>
> The recommendations and the sheer number of Certificates, (Press Passes) – representing 12 years in this country [of] ethno-economic and journalistic work clearly preclude her from any type of labor certification. Nor will any U.S. workers with similar qualifications be available and therefore displaced by her. Look at [the petitioner] from a labor certification process [sic]. To advertise for her skills, advertising here would necessarily have to seek a U.S. citizen, born and raised in Germany so as to understand the German mentality. Next that U.S. citizen would have at least 12 years experience as a journalist learning from the best about economic and journalist techniques. This skill would be required to entice and induce foreign investors to buy American.
>
> Where would the DOL advertise? Here? Germany? There probably are no U.S. workers that even have the same minimum qualifications, or experience level. Can there by any doubt that this person will serve the national interest to a substantially greater degree than available U.S. workers, none of whom possess this unique combination of talent? This level of knowledge cannot be filled by conventional labor certification procedures.

Counsel cited no evidence to support the claim that "[t]here probably are no U.S. workers that even have the same minimum qualifications, or experience level." We note that a basic purpose of the labor certification process is to verify that qualified U.S. workers are unavailable for a given position. If counsel is correct that no minimally qualified U.S. workers are available, then this would be a strong argument for approving a labor certification.

With regard to counsel's argument that the petitioner works for a foreign employer, the record contains minimal information regarding the corporate structure of the publications for which the petitioner has worked. The locally incorporated United States bureau of a German publisher would have standing to apply for a labor certification. Counsel simply claimed that the nature of the petitioner's work makes labor certification impossible. Even if this were proven to be the case, the waiver is not available to every alien who cannot obtain a labor certification. By statute, the petitioner must demonstrate that the waiver would be in the national interest.

Counsel asserted:

> [The petitioner] is well respected in her work in journalism and economics and [for] her unique ability to write articles on various attractions that are designed to give the readers a camera like view of what she is describing. Her efforts to attract German tourists and investors are borne out by her recommendations. . . .
>
> Her plan is to continue to author articles for various publications, one of which currently is printing her articles. Another German bound magazine is now negotiating with her to attract foreign investors to the United States. Because of the lopsided valuation between the U.S. Dollar and the Euro, this has become an increasingly luring [*sic*] place to buy property and a source for infusion of billions of Euros for U.S. citizens who are going through foreclosures at a record rate. Foreign investors have the funds to buy properties at bargain prices and still help Americans in a crumbling housing market.

The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). For the above arguments to have any weight, the petitioner must submit evidence that permits a meaningful comparison between the petitioner's accomplishments (and their results) and the accomplishments of others engaged in similar work. For instance, the petitioner could demonstrate that German investment in certain areas significantly increased after the petitioner featured those areas in her articles – and that similar increases did not result after others wrote articles about other areas. If press coverage in general causes spikes in investor interest, then there is no basis to conclude that the petitioner, in particular, serves the national interest to an especially great extent.

The petitioner submitted no direct, objective documentary evidence of the impact of her past work as a journalist. (Copies of the petitioner's articles establish the existence, but not the significance, of those articles.) Instead, the petitioner submitted a number of letters from various colleagues. [redacted] President of the European Business Council, Cape Coral, Florida, stated:

> [The petitioner] is an Economist, Journalist and an Author, a combination necessary for publishing articles for our Magazine "Discover Florida" published by the European Business Council and distributed through the German Airline LTU and on the East- and Westcoast of Florida and in some Parts of Germany. The goal of this Magazine is to reach thousands of German investors and bring them to Florida.
>
> [The petitioner] is both an exceptional author/journalist and economist. She knows precisely how to understand the German mind and therefore becomes an invaluable tool to address the Germans in order to address immerging [*sic*] trends in economic activity, consumer attitudes and economic confidence levels.
>
> . . . The beneficial affects [*sic*] that she provides to literally thousands of Germans in the investment community in Germany is beyond calculation. . . . The only way she can

draw investors here is by visiting different parts of Florida and researching and writing about the opportunities.

[redacted], Bureau Chief of the German Newspaper Group (described as "a chain of 8 German dailies with a combined circulation of 2.4 million"), Bethesda, Maryland, stated that, in addition to serving as the "principal assistant and researcher" for her husband, the Washington and White House correspondent for *Handelsblatt*, the petitioner "conducted interviews and wrote mainly economic stories on her own. Then and now I'm impressed by the depth of her knowledge and her abilities as a newspaper writer." [redacted] stated that the petitioner's writing, "mainly about economic affairs and US-European relations," was "well received," "by editors (and readers)."

Sample articles address such subjects as the Harley-Davidson plant in York, Pennsylvania, fine dining in Cape May, New Jersey, and an overview of the novels of Zane Grey. While some articles also address tourism in Florida, a focus of her waiver claim, the record does not show any overarching theme to her past work, or any indication that the petitioner, more than other writers, has had a significant effect in encouraging German investment in the United States.

The director denied the petition on July 14, 2008, stating that the petitioner had not persuasively supported counsel's argument that the petitioner's occupation "is not amenable to labor certification." The director also quoted *Matter of New York State Dept. of Transportation* at 218 and 220-221, stating that the precedent decision "directly refutes" the argument that a waiver is in order because no other qualified worker is likely to be found. The director stated: "the labor certification is precisely the test to find out whether [a] qualified U.S. worker can be found, and to allow employment of aliens if no available U.S. worker can be found."

The director found that the petitioner had submitted "no evidence of comparison" between herself and others engaged in similar work. The director noted that the petitioner's witness letters consisted largely of "general phrases and statements, without concrete examples or evidence to back up" the claims in those letters.

On appeal, counsel states:

> The Director focused his attention on the National Interest Waiver with only fleeting references to 8CFR 204.5(k)(4)ii and completely ignored the provisions of 8CFR(k)(3)(i)(B)(ii)(A)-(F). In fact the only reference is the provision enabling the Director to exempt this matter from labor certification.
>
> Instead the whole thrust of this denial is squarely centered around the N.Y. Transit Case (Matter of New York State Dept. of Transportation). That case should be considered in tandem with the I.N.A. and the provisions of 8CFR cited above not to the exclusion. [*Sic.*]

Counsel thus complains that the director addressed the national interest waiver claim, but not the exceptional ability claim. Counsel fails to explain why further discussion of exceptional ability would have changed the ultimate outcome of the petition. A plain reading of section 203(b)(2)(B) of the Act clearly indicates that aliens of exceptional ability are typically subject to the job offer requirement; the aliens must show that their "services in the sciences, arts . . . or business are sought by an employer in the United States." While the national interest waiver is tied exclusively to classification under section 203(b)(2) of the Act, the waiver is a separate benefit. Eligiblity for the underlying immigrant classification does not automatically qualify an alien for the waiver, nor does it create a presumption of eligibility for the waiver.

The statute and regulations demonstrate that the petitioner must make two separate showings: first, that the alien qualifies for classification as an alien of exceptional ability in the sciences, arts or business; and second, that it would be in the national interest to waive the job offer requirement. If the petitioner fails in either of these two areas, then the petition cannot be approved. The director's finding that the petitioner does not qualify for the waiver is, by itself, entirely sufficient to justify a denial of the petition. The petition was filed by the petitioner on her own behalf, with no job offer and no approved labor certification. Therefore, without a waiver, the petition cannot lawfully be approved, even if the petitioner had produced compelling and unimpeachable evidence of exceptional ability. Further below, in the interest of thoroughness, the AAO will examine the petitioner's evidence submitted in support of her exceptional ability claim.

The next passage from the appeal begins with a rhetorical question from counsel: "How would a labor Certification process find someone like this, namely, a German educated in Germany in economics and trained by a well known journalist in Washington DC. She learned by doing the 'grunt work.'" Counsel has not persuasively shown that the petitioner's work could only be performed by "a German educated in Germany in economics and trained by a well known journalist in Washington DC." The circumstances under which the petitioner gained her current skills are much less important, for our purposes, than what she has done with those skills. The record does not show that what the petitioner has done with her skills distinguishes her significantly from other journalists.

Counsel asserts that, given the current economic crisis, "we must depend upon foreign investments to help get our Country some relief." The petitioner, however, has submitted no reliable evidence to show that her work has had any appreciable impact on foreign investment. The petitioner has simply claimed that her articles will persuade German investors to boost the economy of the United States. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). The petitioner has not established any track record of influencing foreign investment in the United States, and her personal confidence that her work will one day lead to such investment cannot suffice to establish her eligibility for a national interest waiver.

For the reasons discussed above, the AAO affirms the director's finding that the petitioner has failed to establish that she qualifies for a national interest waiver of the job offer/labor certification requirement.

This finding, independently, is sufficient by itself to warrant dismissal of the appeal and, therefore, the AAO will dismiss the appeal.

As counsel notes on appeal, the director limited the initial decision to the issue of the national interest waiver, and did not discuss the question of the petitioner's eligibility for the underlying immigrant classification. In the interest of thoroughness and clarity, the AAO will address that issue here. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

An alien may qualify for the national interest waiver only if that alien qualifies for classification under section 203(b)(2) of the Act, either as a member of the professions holding an advanced degree or as an alien of exceptional ability in the sciences, arts or business.

8 C.F.R. § 204.5(k)(2) provides the following pertinent definitions:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.
>
> *Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.
>
> *Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

The petitioner did not claim to qualify for classification as a member of the professions holding an advanced degree. In the denial notice, the director indirectly acknowledged as much, stating: "The record showed that the beneficiary had less than four years of education in economics and no formal education in journalism." Counsel does not contest this finding on appeal, instead asserting that the petitioner "is following a familiar track. Abe Lincoln did not go to law school. He learned by doing."

The petitioner, on her résumé, claimed to hold a "Diploma as Master of Business Administration" from the Academy of the Rhineland, Cologne, Germany. The petitioner submitted an evaluation report from the Foundation for International Services. That evaluation does not indicate that the petitioner holds a master's degree. Rather, the evaluator indicated that the petitioner "has the equivalent of completion of

professional training in business from a vocational school in the United States." Taking the petitioner's employment experience into account as well (explicitly relying solely on the petitioner's own résumé as evidence of employment), the evaluator concluded that the petitioner "has a background equivalent to that of an individual with a bachelor's degree in journalism from a regionally accredited college or university in the United States."

While 8 C.F.R. § 204.5(k)(2) permits experience to take the place of a master's degree, there is no comparable clause relating to a bachelor's degree. If a given alien does not hold at least a U.S. baccalaureate degree (or a foreign degree equivalent to a U.S. baccalaureate), then that alien cannot qualify for classification as a member of the professions holding an advanced degree.

The petitioner, through counsel, claimed to qualify for classification as an alien of exceptional ability. Congress did not open the classification to every alien who shows exceptional ability in every conceivable occupation or discipline. Rather, Congress specifically required exceptional ability in the sciences, arts or business. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5th Cir. 1987). The "sciences, arts or business" clause is without purpose or meaningful effect unless that clause narrows the range of eligible occupations. Counsel did not specify whether the petitioner's occupation falls under the sciences, arts or business.

Leaving aside the question of whether the petitioner's work falls under the collective rubric of the sciences, arts or business, we shall consider counsel's claim that the petitioner meets the regulatory requirements for the classification. If she does not meet them, then the question of whether the petitioner's work falls within the sciences, arts or business is moot.

The regulations at 8 C.F.R. § 204.5(k)(3)(ii) set forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. We note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below. Qualifications possessed by all or most workers in a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." For example, every qualified physician has a college degree and a license or certification, but it defies logic to claim that every physician therefore shows "exceptional" traits.

Counsel claimed that the petitioner "meets at least 3 out of the 6 criteria," specifically the following:

> *An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.* 8 C.F.R. § 204.5(k)(3)(ii)(A)

Counsel stated that the petitioner "has a diploma and licenses relating to her area of exceptional ability." Licenses are covered by 8 C.F.R. § 204.5(k)(3)(ii)(C). Also, as noted above, an evaluation in the record indicates that the petitioner's degree is "equivalent to completion of professional training in business from a vocational school in the United States." This training, in turn, is clearly below the level of a bachelor's degree, because the evaluator concluded that only by taking the petitioner's experience into account could the petitioner be said to have "a background equivalent to that of an individual with a bachelor's degree in journalism." Experience is covered by a separate criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B), below; 8 C.F.R. § 204.5(k)(3)(ii)(A) is limited to academic education.

As stated previously, the petitioner's academic training has been found to be equivalent to "professional training in business from a vocational school." The petitioner admittedly holds no degree in journalism. The petitioner has not shown that this level of formal academic training demonstrates a degree of expertise significantly above that normally encountered among journalists who specialize in economic news. The petitioner has not satisfied this criterion.

> *Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.* 8 C.F.R. § 204.5(k)(3)(ii)(B)

In terms of letters from current or former employers – the type of evidence required by the above regulatory language – the petitioner documented almost 15 years of employment, as follows:

| Employer | Title or responsibilities | Dates |
|---|---|---|
| [redacted] | Market researcher | January 1971-September 1974 |
| | Advertising | July 1977-January 1980 |
| | Advertising | January 1980-December 1984 |
| | Branch leader | January 1985-June 1988 |

None of the above experience was in the occupation of a journalist or "ethnoeconomist" (a term that the petitioner has not fully defined). The regulatory language calls for evidence of "experience in the occupation," rather than in the general field or in related occupations.

Counsel asserted that the petitioner meets this criterion by having served as the "assistant . . . researcher and editor" for her now-deceased spouse from 1988 to 2001. The petitioner, however, submitted no documentation to support this claim. The petitioner's spouse was a *Handelsblatt* correspondent during the period in question, but the only employment letter submitted from *Handelsblatt* is dated June 30, 1988, and that letter cannot verify employment that took place after that date. Photocopied press passes from the 1990s are not evidence of full-time employment. Rather, they document the petitioner's involvement in specific short-term events.

A 2007 letter from [redacted]t, described on its letterhead as a "Companny [*sic*] for Commercialization Association with Legal Capacity," indicates that the petitioner "in 1993 signed a

safeguarding contract with VG Wort." Counsel stated: "Apparently, this is a blanket copy write [*sic*] for everything she authors." Once again, this is not evidence of full-time employment; copyright arrangements would be necessary whether the petitioner was a full-time employee, an occasional freelance writer, or a one-time author. Similarly, copies of a small number of sample articles written by the petitioner do not establish or imply full-time employment as a journalist.

The record lacks "letter(s) from current or former employer(s)" to establish that the petitioner has at least ten years of full-time experience as an economic journalist. The petitioner has not satisfied this criterion.

> *A license to practice the profession or certification for a particular profession or occupation.* 8 C.F.R. § 204.5(k)(3)(ii)(C)

Counsel mentioned "licenses" in the context of the petitioner's academic degrees. We will discuss them here, under the regulation that deals with licenses. Counsel states:

> [The petitioner] possesses numerous press passes that were issued by several countries. These are major monetary events as the Internaternational [sic] monetary conferences and the G-7 Monetary Conferences held by the financial heads of the major countries in the world.
>
> These "passes" are, indeed, licenses to enter a foreign country to perform specific journalistic functions and for a specified period. These passes are available to journalists only working for publishers in their home country.

We note that, if the petitioner's press passes are, as claimed, "available to journalists only working for publishers in their home country," then it follows that the petitioner would be unable to obtain press passes for German publishers after making the United States her "home country."

More significantly, the petitioner has not established that these press passes are indicative of exceptional ability in journalism. The director, in denying the petition, observed that the petitioner received most of these passes at a time when she herself was not even working as a journalist, but rather as her husband's assistant, doing what counsel has called "grunt work." If the petitioner received these passes not as a reporter in her own right, but as a reporter's assistant, then it is clear that one need not even be a journalist at all to receive such passes. The petitioner has not satisfied this criterion.

> *Evidence of membership in professional associations.* 8 C.F.R. § 204.5(k)(3)(ii)(E)

Counsel stated that the petitioner "holds memberships in professional associations open only to individuals with special skills." Counsel did not elaborate and the record does not identify any of these associations. Therefore, the petitioner has not satisfied this criterion.

> *Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.* 8 C.F.R. § 204.5(k)(3)(ii)(F)

Counsel claimed that "letters of recommendations" (sic) satisfy this criterion. Counsel did not identify any "recognition" that the petitioner has received apart from witness letters that we have already discussed. The AAO holds that letters of this kind have little weight as evidence of recognition under 8 C.F.R. § 204.5(k)(3)(ii)(F). All the other criteria of exceptional ability clearly refer to evidence that exists as a natural result of a given alien's training or work in a particular occupation. Letters of recommendation, on the other hand, often do not exist until the alien decides to seek immigration benefits, at which time the letters are solicited and written specifically to support that petition. Such letters do not carry the same weight as awards or other forms of formal recognition that exist because of the alien's achievements and contributions, not because the alien requested their creation to support a visa petition. The petitioner has not satisfied this or any other criterion of exceptional ability.

On appeal, counsel stated:

> The Director has completely ignored the evaluation from the Foundation for International Studies (F.I.S.). Petitioner clearly possesses the initial qualifications and thus the director would necessarily move on to the provisions of the six tests used to gauge exceptional ability. He also ignored the fact that Petitioner met three out of the six standards and therefore qualified for the EB-2 Approval.

The assertion that the "Petitioner met three out of the six standards" is a claim, not a "fact." With regard to counsel's claim that the educational evaluation shows that the "Petitioner clearly possesses the initial qualifications," it is not clear to what "initial qualifications" counsel refers. Clearly counsel does not mean that the evaluation establishes the petitioner's exceptional ability, because that would negate the need to "move on to the provisions of the six tests used to gauge exceptional ability" at 8 C.F.R. § 204.5(k)(3)(ii).

Whatever counsel believes the various requirements and criteria to be, in point of fact the petitioner must first establish eligibility for classification under section 203(b)(2) of the Act, and then, in the absence of a job offer, the petitioner must separately establish that it is in the national interest to waive the job offer requirement. In this proceeding, the petitioner has accomplished neither of these. Based on the record of proceeding before the AAO, the petition cannot be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.